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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/674,062	01/03/2001	Zhongming Zeng	CCPIT102	9268

7590 12/20/2002

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EXAMINER

TELLER, ROY R

ART UNIT

PAPER NUMBER

1654

DATE MAILED: 12/20/2002

10

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/674,062	ZENG, ZHONGMING
Examiner	Art Unit	
Roy Teller	1654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 01 November 2002.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) 1-21 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 22-38 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

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## DETAILED ACTION

The reply filed on 11/1/02 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s): Applicant's new claims encompass additional inventions. See 37 CFR 1.111. Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

In paper # 9, received 11/1/02, applicant canceled claims 1-21 and added new claims 22-38.

### *Election/Restrictions*

In view of the foregoing, restriction to one of the following inventions is required under 35 U.S.C. 121 to elect **one** from each of the following groups:

- a) single amino acids- glutamic acid, glutamine, aspartic acid, asparagines, isoleucine, methionine, phenylalanine, tyrosine, valine, leucine, proline, threonine, cysteine, alanine, glycine, serine, lysine, arginine, tryptophane, histidine, class 562, subclass 533.
- b) oligopeptide/polypeptide, class 530, subclass 300+.

c) pharmaceutical alkalis- calcium hydroxide, magnesium hydroxide, sodium carbonate, sodium bicarbonate, sodium lactate, sodium citrate, sodium acetate, calcium carbonate, potassium bicarbonate, sodium phosphate, disodium hydrogen phosphate, dipotassium hydrogen phosphate, class 252, subclass 193.

d) anti-fungals- Miconazole, Ketoconazole, Treconazole, Itraconazole, Fluconazole, 5-Flucytosine, Mikostatine, class 424, subclass 404.

e) plant extract- Radix Sophorae Flavescentis, Monnierii Fructus Cnidii, Herba Hedyotis Diffusae, Desmodium styracifolium, Cortex Phellodendri, class 424, subclass 58.

The amino acids, oligopeptides and polypeptides are distinct and different on the basis of physical, chemical and biological properties even where the application would place all as a composition, they are all of different function. The search of the patent and technical literature for one of the amino acids, oligopeptides and polypeptides would not have resulted in a complete search for any one of these combinations.

Regarding the pharmaceutical alkalis, anti-fungals, and plant extract combinations these inventions are distinct since they have acquired a separate status in the art as shown by their different classification and/or divergent subject matter, and/or are separately and independently searched, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this supplemental restriction to be complete must include an election of the invention to be examined even though the requirements be traversed (37 CFR 1.143).

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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy Teller whose telephone number is (703) 305-4243. The examiner can normally be reached on Monday-Friday from 5:30 am to 2:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback, can be reached on (703) 306-3220. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3014.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

RT  
1654  
12/17/02

RT

*Brenda Brumback*  
BRENDA BRUMBACK  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600